

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

JEFF NICHOLS AND GILBERT MYERS,

Plaintiffs,

v.

JIM WALSH, Representative for the 19th
Legislative District of Washington State, in
his official capacity,

Defendant.

No.:

COMPLAINT

COMPLAINT FOR INJUNCTIVE RELIEF

Introduction

Plaintiffs Jeff Nichols and Gilbert Myers (“Plaintiffs”), bring this complaint against Representative Jim Walsh (“Defendant”), and allege the following:

1. This is a freedom of speech and right to petition case brought under the First and Fourteenth Amendments to the United States Constitution; and Article I, Sections 3, 4, and 5 of the Washington State Constitution for declaratory and injunctive relief against Representative Jim Walsh (“Representative Walsh” or the “Representative”) in his official capacity as

[Nichols & Myers v. Walsh]
COMPLAINT- 1

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1 Representative of the 19th District of Washington State, arising out of his unlawful censorship of
 2 Plaintiffs on his “Jim Walsh” Facebook page.

3 2. Social media has recently become a crucial venue for public officials to
 4 disseminate news and information, and an equally crucial opportunity for the public to express
 5 their thoughts and opinions in response to such news. As the Supreme Court stated last year,
 6 Facebook and other social media platforms provide “perhaps the most powerful mechanisms
 7 available to a private citizen to make his or her voice heard.” *Packingham v. North Carolina*, 137
 8 S. Ct. 1730, 1737 (2017). The Supreme Court additionally stated that these platforms are
 9 “revolution[ary]” in their ability to increase civic engagement with elected officials through the
 10 instantaneous and direct communication opportunities provided by these platforms. *Id.* at 1736.
 11 This ability of social media platforms such as Facebook to serve as forums for direct
 12 communication between constituents and public officials is analogous to speech that, until
 13 recently, was only attainable for people who were physically gathered in the same space, such as
 14 in a public park or town hall. Lyrissa Lidsky, *Public Forum 2.0*, 91 B.U. L. Rev. 1975, 2005
 15 (2011). As such, cyberspace has become one of the most important places for the exchange of
 16 views, one which enables a person “to become a town crier with a voice that resonates farther
 17 than it could from any soapbox” and must not be unlawfully restricted. *Reno v. American Civil*
 18 *Liberties Union*, 117 S. Ct. 2329, 2344, 521 U.S. 844, 870 (1997).

22 3. Representative Walsh’s “Jim Walsh” Facebook page is a significant source of
 23 information and news for the people of Washington State, as well as a popular forum for speech
 24 by, to, and about the Representative. By banning access to this forum and deleting comments
 25 based on the viewpoint of the speaker, Representative Walsh has violated plaintiffs’ right to free
 26

1 expression, to petition the government for a redress of wrongs and grievances, and to hear the
2 banned speech that would have otherwise been engaged in, distorting the expressive forum..
3 Courts have “repeatedly affirmed the First Amendment significance of social media, holding that
4 speech utilizing Facebook is subject to the same First Amendment protections as any other
5 speech.” *Davison v. Loudoun Cty. Bd. of Supervisors*, 227 F. Supp. 3d 605, 611 (E.D. Va. 2017).
6

7 4. The Representative’s operation of his “Jim Walsh” Facebook page constitutes a
8 limited public forum under the First Amendment. The Representative’s Facebook page is
9 accessible to the public, including those without a Facebook page; in regard to interactions on the
10 page, it is accessible for all Facebook users, regardless of whether the user “likes” or “follows”
11 the page.
12

13 5. The Representative’s “Jim Walsh” Facebook page is dynamic, with each of his
14 posts gaining numerous comments, likes, and shares. The page is used by the Representative to
15 promote his policies, and to encourage his supporters to take action.
16

17 6. Plaintiffs are Representative’s constituents who have been banned from
18 interacting on his “Jim Walsh” Facebook page and has had their comments deleted due to their
19 criticism of the Representative and his policies. As a result of their criticism, Plaintiffs have been
20 impeded from commenting on the Representative’s posts or having any type of discussions on
21 his posts. As a limited public forum, especially one in which individuals are participating in
22 political speech, the Plaintiffs are protected by the First Amendment, and the Representative’s
23 actions constitute unlawful, viewpoint-based exclusion.
24

25 7. Plaintiffs respectfully ask that the Court declare that the viewpoint-based
26 exclusion of the Plaintiffs violates the First Amendment of the United States Constitution, in
27

1 addition to Article I of the Washington State Constitution, and order the Defendant to cease his
2 unlawful practice of censoring constituent comments, restore the Plaintiffs' posting privileges
3 and undertake review of all people whose posting privileges have been censored, and restore all
4 of those who have been unlawfully banned for commenting.

5 8. Plaintiffs seek a declaration and judgment under 28 U.S.C. § 2201 and RCW
6 7.24.010 that Defendant's censorship of Plaintiffs on his "Jim Walsh" Facebook page, in the form
7 of viewpoint-based exclusion, is an unconstitutional violation of Plaintiffs rights to freedom of
8 speech and to petition the government under the First and Fourteenth Amendments to the United
9 States Constitution and Article I of the Washington Constitution. Plaintiffs also seek preliminary
10 and permanent injunctive relief in the form of an order enjoining the Representative from
11 continuing this unlawful censorship of constituents.
12

13 **Jurisdiction and Venue**

14 9. This Court has subject matter jurisdiction over Plaintiffs' federal constitutional
15 claims pursuant to 28 U.S.C. §§ 1331 and 1343, and 42 U.S.C. §§ 1983 and 1988, as this action
16 arises under the Constitution and laws of the United States.
17

18 10. This Court has subject matter jurisdiction over Plaintiffs' Washington state
19 constitutional claims pursuant to 28 U.S.C. § 1367, as those claims are substantially related,
20 both legally and factually, to the federal constitutional claims upon which original jurisdiction is
21 premised.
22

23 11. This Court has personal jurisdiction over the Defendant because he is a resident
24 of Washington State.
25

26 12. This Court has jurisdiction to grant declaratory and injunctive relief pursuant to
27

28 U.S.C. § 2201-02, 42 U.S.C. § 1983, and RCW 7.24.010.

13. Venue in this district is proper under 28 U.S.C. § 1391(b)(1) and (2) because the Defendant is a resident of the district, and a substantial part of the events or omissions giving rise to the claim occurred within this district.

14. This case is properly filed in Tacoma because the Plaintiffs were subject to unlawful action in Grays Harbor and Thurston Counties.

Parties

15. Plaintiff Jeff Nichols is a resident of Montesano, Washington, which is a part of Grays Harbor County.

16. Plaintiff Gilbert Myers is a resident of Aberdeen, which is a part of Grays Harbor

17. Defendant Representative Jim Walsh is a Representative of the 19th Legislative District of Washington State. He is a resident of Aberdeen, Washington, with offices in Aberdeen and Olympia, Washington.

18. At all times relevant to this complaint, Representative Walsh was acting under color of state law.

Factual Allegations

A. Facebook

19. **Facebook.** Facebook is a social media platform with approximately 2.23 billion monthly users worldwide, including more than 200 million users in the United States and Canada. The site allows users to post messages and photos, to respond to or share others' messages or photos, and to interact with other Facebook users in relation to those posts. Facebook is located on the internet at <https://www.facebook.com>

20. **Page.** A Facebook page is created by a Facebook user. The user is then able to interact with other Facebook users through that page. Facebook explains “Pages” in its online Help Center at *Page*, located at <https://www.facebook.com/help/282489752085908>.

21. **Post.** A post is a written message that is shared with a Facebook user’s friends, followers, or the public, depending on the user’s privacy settings. Posts may also be written directly on other Facebook user’s pages when that user’s settings allow. These posts can include but are not limited to written messages, photos and videos.

22. **Following.** Facebook users can subscribe to other users’ posts by “following” a user’s page. Users see all messages that are posted by or shared by the users or pages they have followed. Facebook explains “Following” in its online Help Center at *What does it mean to follow someone or a page?*, located at <https://www.facebook.com/help/279614732052951>.

23. **Commenting.** Facebook users can post comments on their own or other user’s posts, and also post comments in reply other’s comments on those posts. Currently, to comment on another user’s post, one clicks the “Comment” graphic that appears directly under the post. Facebook explains “Commenting” in its online Help Center at *What does Comment With Friends on a Page Post mean?*, located at <https://www.facebook.com/help/224022941703605>.

24. **Sharing.** Facebook users can share another user’s post, which publishes the other user’s post on the user’s own timeline, among their own posts. Currently, to share another user’s post, one clicks the “Share” graphic that appears directly under the post. Facebook explains “Sharing” another user’s posts in its online Help Center at *When someone re-shares something I posted, who can see it?*, located at <https://www.facebook.com/help/569567333138410>.

25. **Reacting.** Facebook users also have the ability to react to posts using graphics without replying or posting their own comment. Currently, to react to another user's post, one clicks the "Like" graphic that appears directly under the post, then chooses to click one of six graphical "emoticons" to represent their "reaction." Facebook explains "Reacting" in its online Help Center at *How do I react to a post or comment?*, located at <https://www.facebook.com/help/933093216805622>.

26. The "Like," "Comment," and "Share" clickable graphics, as well as the six graphical "emoticons" referenced in the directly-above three previous paragraphs appear to a Facebook user as shown below:



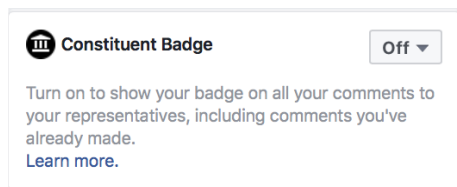
27. **Banning.** Users have the ability to ban other users from their page. When a user is banned from a page, they lose their ability to post to that page, react to posts on that page, or comment on the posts on that page. Facebook explains "banning" in its online Help Center at *How do I ban or unban someone from my Page?*, located at <https://www.facebook.com/help/185897171460026>.

28. **Town Hall.** In 2017, Facebook released a new feature called "Town Hall" as a tool to help users find and contact their government representatives and to increase users' "civic engagement" with public officials on the social media platform. Facebook explains this feature in its online Help Center at *What is Town Hall?*, located at <https://www.facebook.com/help/278545442575921>.

29. To participate in "Town Hall," Facebook has requirements for the government official's Facebook page. One requirement for "Town Hall" is that the official's page must be

1 categorized as “Politician” or “Government Official,” and must accurately reflect the official’s
2 current government position.

3 30. **Constituent Badges.** Through the “Town Hall” feature, Facebook users may
4 publicly identify themselves to their government officials and the public through the use of a
5 “constituent badge” graphic. When a user “opts in” to the use of a “constituent badge,” the
6 graphic appears by their name whenever interacting on the Facebook page of a government
7 official that represents the area of the location the user entered when opting in. Facebook
8 explains this feature in its online Help Center at *What is a constituent badge?*, located at
9 <https://www.facebook.com/help/157047021494292>. The constituent badge graphic is shown
10 below, as is the appearance of a user’s choice to opt in to the feature:.



13
14 **B. “Jim Walsh” Facebook page**

15
16 31. Representative Jim Walsh created, owns, and operates a Facebook page
17 entitled “Jim Walsh.” The page was created on November 3rd, 2015. The page is located at
18 <https://www.facebook.com/pg/Jim-Walsh-943288459098642>.

19
20 32. “Jim Walsh” is used by the Representative and his staff for sharing
21 information such as news, press releases, announcements and action items to everyone with
22 access to Facebook, including his followers, supporters, critics, and constituents.

23
24 33. “Jim Walsh” is not Representative Walsh’s personal page. Representative
25 Walsh’s personal Facebook page is entitled “James Walsh” and is located on the internet at
26

1 <https://www.facebook.com/james.walsh.92167>.

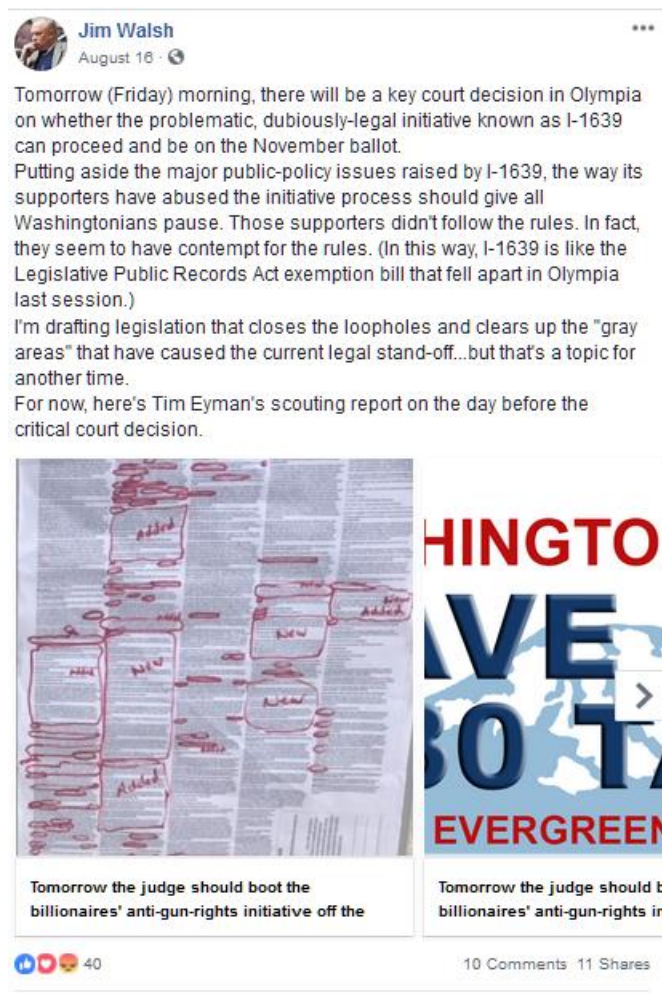
2 34. The Representative's "Jim Walsh" Facebook page is categorized as a
3 "Politician." Representative Walsh participates in the "Town Hall" Facebook feature through
4 his "Jim Walsh" Facebook page. The listing for the "Jim Walsh" page accurately reflects his
5 current elected government position as a Representative for the 19th Legislative District of
6 Washington State, as shown below:
7



10 35. The avatar Representative Walsh uses on Facebook and has used since July
11 2, 2017, when interacting with other Facebook users through his "Jim Walsh" Facebook page
12 consists of a photograph of himself seated at his station on the floor of the Washington State
13 House of Representatives chamber, as shown here:
14



36. “Jim Walsh” features many posts written in the first-person from Jim Walsh, indicating that Representative Walsh controls the page. Representative Walsh uses “Jim Walsh” to perform government business, including providing information and announcements about his legislative work. In one such post, the Representative describes legislation he was then drafting as the Representative of the 19th Legislative District. That post, from August 16, 2018, is shown below:



37. In another post, Representative Walsh describes legislation he intends to push for as the Representative for the 19th Legislative District. That September 28, 2018, post is shown

below:



38. In another post, Representative Walsh provides an internet link from the official jimwalsh.housepublicans.wa.gov website for Facebook users to download a copy of his official schedule as a Representative for the 19th Legislative District. That April 17, 2018, post is shown below:

**Jim Walsh**

April 17 · 🌐

Here's the link to my calendar from last week (week of Monday, April 9). I've checked and double-checked this link...it seems to work fine:
<http://jimwalsh.houseRepublicans.wa.gov/.../Calendar-April-9t...>

JIMWALSH.HOUSEREPUBLICANS.WA.GOV
jimwalsh.houseRepublicans.wa.gov



3

39. In another post, Representative Walsh shared a post from Brian Blake, and referred to Mr. Blake as his "legislative colleague." The text portion of that August 4, 2018, post is shown below:

**Jim Walsh** shared a post.

August 5 · 🌐

Here's an instructive bit of social media.

My legislative colleague posted what should be a non-controversial link to an article on the bad effects of the exploding sea lion (one species of pinniped) population preying on local salmon. The relevant government agencies, including WDFW, and most academic researchers agree that "pinniped predation" is a major...probably THE major...factor in dwindling salmon numbers. You might say "the science is settled."

But several political partisans bicker with the article's points in the comments below my colleague's post. They use familiar rhetorical tricks of the Alinskyite Left: demand atomically specific evidence for every statement (or even question), while making unsupported statements of their own; confuse correlation with causation; insert other logic flaws--especially false mutual exclusivity--into their arguments.

Many voters in LD19 tell me they no longer vote along party lines because they don't support the environmental extremists who've hijacked one of the major parties. They believe those enviro's lack common sense.

This is one small example of that.

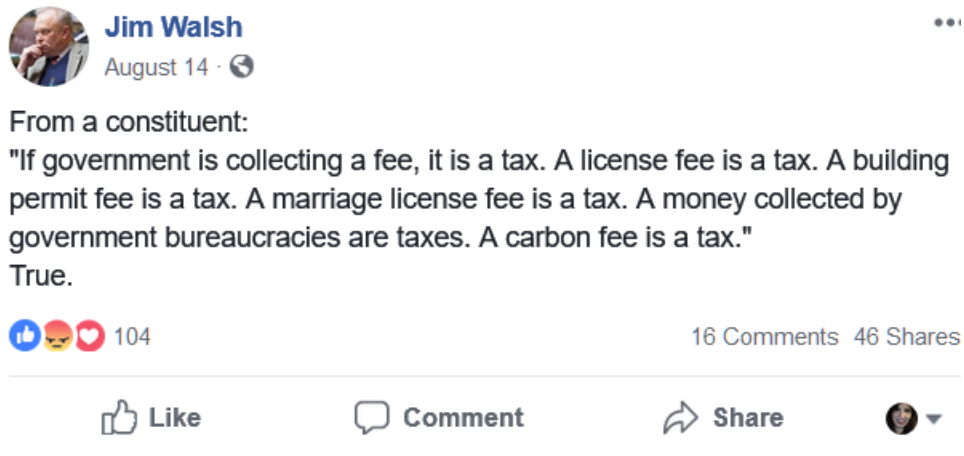
**Brian Blake**

August 4

Interesting


 A solid blue horizontal bar.

40. In another post, Representative Walsh quotes an individual whom he refers to as a “constituent.”. That August 14, 2018, post is shown below



41. In another post, Representative Walsh posts a photograph, giving credit for it to his “legislative aide.” That April 20, 2018, post is shown below:



42. In another post, Representative Walsh shared photographs of himself participating in an official “ribbon cutting” at a local courthouse in his official capacity as a Representative of the 19th Legislative District.. That August 6, 2018, post is shown below:



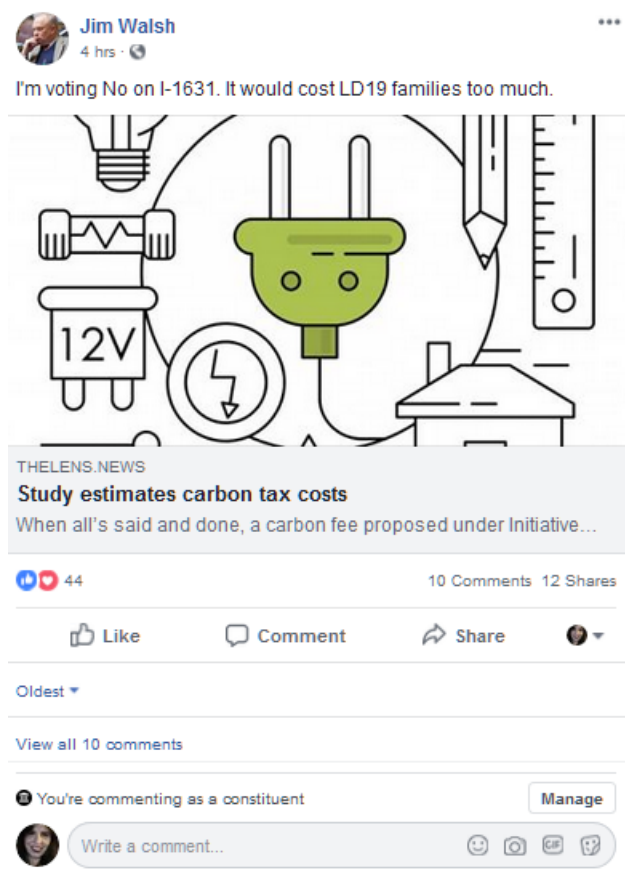
43. “Jim Walsh” is interactive. It is both a platform for constituents to voice their gratitude or concerns, as well as one in which Representative Walsh can engage with constituents. Facebook page owners and operators have the option to allow other Facebook users to post directly to that page. The “Jim Walsh” Facebook page is currently operated to allow any Facebook user create a post directly onto the “Jim Walsh” page, even users who

are not “followers” of the page, except for those users that have been “banned” from the page. When a non-banned user views the “Jim Walsh” page, the “Create Post” option is shown at the beginning of the “timeline,” as shown below:



44. When a banned user views the “Jim Walsh” Facebook page, the “Create Post” option is not shown at the beginning of the “timeline.”

45. When a user who is not banned from the “Jim Walsh” Facebook page views a post from that page, the user has the option to comment, react, or share, as shown below. Users who have opted in to the constituent badge feature with an address within the 19th Legislative District of Washington State see the constituent badge graphic and a message reminding the user that they are commenting as Representative Walsh’s “Town Hall” constituent, as shown below:



C. Defendant's banning of Mr. Nichols from the "Jim Walsh" Facebook page

46. Mr. Nichols lives in the 19th Legislative District of Washington and is a constituent of Representative Walsh.

47. Mr. Nichols began interacting with Representative Walsh by following his "Jim Walsh" Facebook page in 2016, and then commenting on and reacting to select posts from that page.

48. Mr. Nichols opted in to the constituent badge feature such that the constituent badge graphic would show by his avatar when interacting with the "Jim Walsh" Facebook page.

1 49. On September 21, 2018, the “Jim Walsh” Facebook page made a post that
2 was written in the first-person from Representative Walsh on the subject “why [he] want[s] to
3 be a legislator in Olympia.”

4 50. Mr. Nichols commented on this post. Representative Walsh initially
5 commented back to Mr. Nichols on that post and the two had a direct dialog via comments on
6 that post.

7
8 51. Mr. Nichols final comment on that post included the following internet link
9 that allowed Facebook users reading the comment to download a digital PDF file titled
10 “Washington State Labor Council, AFL-CIO – 2018 LEGISLATIVE VOTING RECORD:
11 <http://www.wslc.org/wp-content/uploads/2018/04/18-WSLC-Voting-Record.pdf>. That
12 Legislative Voting Record provided information on 20 bills voted on by Washington State
13 Senators in 2018, 22 bills voted on by Washington State Representatives in 2018, how each
14 Senator and Representative voted on those bills, and the Washington State Labor Council
15 opinion on whether that vote was “right” or “wrong.” The Legislative Voting Record file
16 indicates how Representative Walsh voted on the 22 House bills, but incorrectly listed him as
17 the Representative from the 16th Legislative District of Washington State.
18
19

20 52. Soon after Mr. Nichols posted that link, all of Mr. Nichols comments and
21 reactions were removed from the “Jim Walsh” Facebook page, including the comment with
22 that link, and Mr. Nichols was then banned from the “Jim Walsh” Facebook page.

23 53. That September 21, 2018, post, as it currently appears on Facebook, is shown
24 below. Included with the post are comments the Representative has allowed to remain
25 viewable by the public. There are comments from Facebook users identified with a
26

1 constituent badge, comments from Facebook users who are not identified with a constituent
 2 badge, comments from the Representative himself, and a comment towards the bottom from
 3 a Facebook user identified with a constituent badge directed at Mr. Nichols thanking for
 4 information he had shared as part of his comments he made.

**Jim Walsh**

September 21 · 🌐

When I talk with LD19 voters, many ask why I want to be a legislator in Olympia. But today, just another Friday in September, provides the answers.

Scan down the page to read about state agencies screwing up the fisheries in Willapa Bay (which is supposed to be impossible to screw up!). Scan a little farther to see a more encouraging endorsement from the WA Farm Bureau.

But, most on point, here's a Private Message I received a couple of hours ago from an LD19 voter who owns a local business with her husband:

"We are absorbing all the requirements and the financial hit our company will take from the Family and Medical Paid Leave Act. We have to start reporting and administering this in 2019. Does the legislature ever even consider the administrative time it takes to comply with such a program? Even our employees are outraged by learning their earnings will be siphoned off for this program. ...I don't know how much longer we will operate our business in WA state as it has gotten so unfriendly to small business in regards to taxes and regulations. We love our employees and their families and we have always been ahead of the curve for wages and benefits. But the state has ZERO regard for the risks we take every single day running a business and employing 60-plus people (risks to our home and every dime we have worked for). The onerous state regulations and King County policies running our state are at a tipping point for us."

My mission is to push state policy back from that tipping point. To keep small businesses...and commercial fisheries...and farmers...from leaving. Washington is a great place to live, work and raise a family. I go to Olympia to fight to keep it that way!

126

13 Comments 31 Shares



Oldest -

Oldest

**Brian Parvi** Thanks for all your sound thinking and hard work, Jim.

That message is where the tire meets the road, folks, and I'd bet there are many hundreds of instances of the same, not yet expressed.

Oppressive.

Like · Reply · 4w



10

**Erik Wingren** I'm constantly amazed that anyone runs a business in this state. Glad they do, but wow.

Like · Reply · 4w



7

**Jerry Davenport** 🗣️ It is extremely difficult to run a business in WA state, I keep trying but can't expand because of the burdensome regs and taxes.

Like · Reply · 4w



10

**Kenneth M. Dawson** Implement the electoral college or make king county their own state. If something doesn't change king county is gonna take us all down to 3rd world status.

Like · Reply · 4w



9

👤 2 Replies

**Chris Moody-Yeager** As an owner of a small business with my husband, I totally understand how these small business owners feel. Many years ago I asked our Grays Harbor County Commissioners to implement the E-Verify program, which they did. Our small Family business pays... [See More](#)

Like · Reply · 4w



12

**Chris Moody-Yeager** My next question is where do you stand on this issue Mr. Walsh? I like you and voted for you and I pray you are with law abiding American's.

Like · Reply · 4w

**Bonnie Maynard** 🗣️ I agree with you Chris we sold our Thriftway back in 1997 and we were a corp. and were told how we would be fined if we did not have the proper E-verify docs. in place it makes me wonder what this state and country is coming to I think something desperately needs to change or there will not be any small business and Aberdeen is headed that way at a high rate of speed.

Like · Reply · 4w · Edited



2

**Jim Walsh** I support enforcement of our country's immigration laws. E-verify is an important tool in that enforcement. So is cooperation between local and federal agencies. That's the issue we can address in Olympia--put rational limits on "sanctuary cities" or counties. And encourage reasonable cooperation between local law enforcement and ICE.

Like · Reply · 4w · Edited



11

[Nichols & Myers v. Walsh]

COMPLAINT- 19

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Marc Hamilton What pisses me off is when you try to get someone here legally it costs thousands of dollars and that's still no guarantee they can come in . Just to get the paperwork started legally you have to pay the USCIS \$535 and wait for maybe a year and then pay for medical exams ,visa , interview at the Embassy then if they decide for any reason they don't like you they can stop it all and that's after they have spent thousands of dollars in plane or other transportation costs to get to the US embassy just to be told they don't qualify. Yet the illegals come here and the government bends over backwards to keep them . It is no wonder people sneak in with hopes of living better . Don't get me wrong here either . I am totally against coming in this country and not assimilating to our culture and protesting our government .

Like · Reply · 4w



Chris Moody-Yeager Jim Walsh the only thing I disagree with is (No)- sanctuary cities or counties should be allowed. They are hiding illegal aliens/criminals and that goes against our US laws and our American Constitution.

Like · Reply · 4w



Jim Walsh Local govts can make whatever statements they like--pass nonbinding resolutions, etc. But when they take action instructing their local law enforcement agencies (police or sheriff's delta) not to cooperate with ICE or other law enforcement agencies, they've crossed a line into lawless behavior.

Like · Reply · 4w

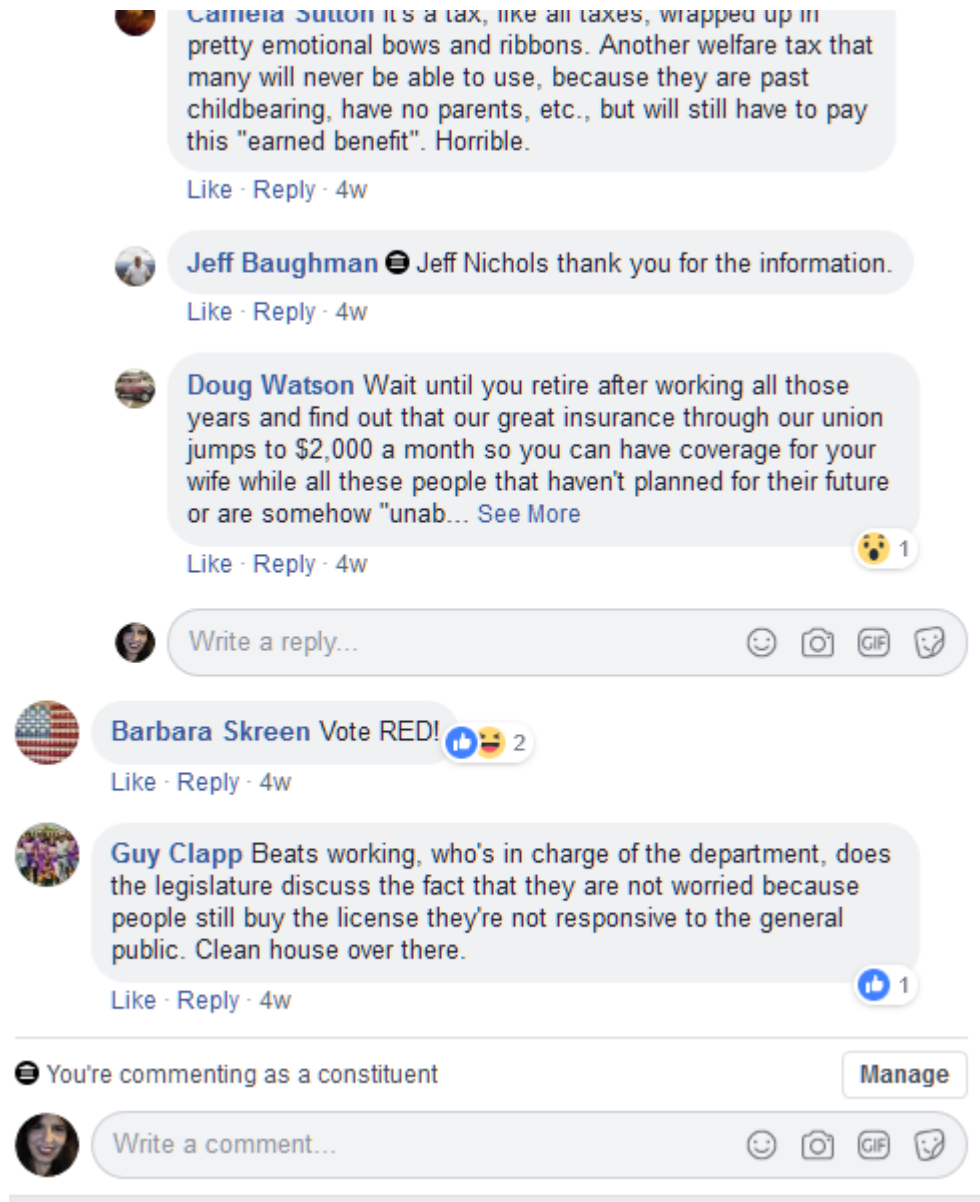


Write a reply...

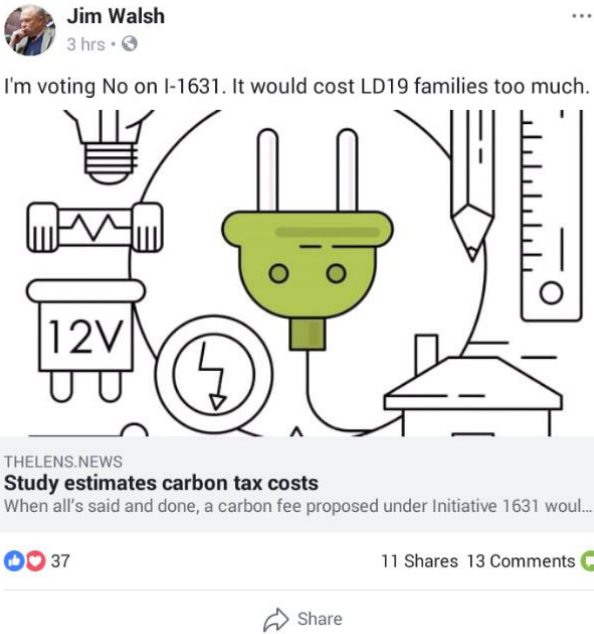


Russ von Querner





21 54. The below graphic shows how a post from the "Jim Walsh" Facebook page
 22 currently looks to Mr. Nichols since he was banned from that page. Note that the graphic
 23 indicates comments and reactions have been made on the post, but there is no option for Mr.
 24 Nichols to do either of those activities, and there is no message or graphic indicating he would
 25 be commenting as Representative Walsh's constituent:
 26



55. Mr. Nichols' comments on posts on the "Jim Walsh" page were not scandalous, libelous, defamatory, pornographic, off topic, duplicative, obscene or offensive.

56. Defendant's banning of Mr. Nichols from the "Jim Walsh" Facebook page prevents or impedes him from participating in the Representative's posts and engaging in discussion with Representative Walsh and with other constituents.

57. Mr. Nichols has informed Representative Walsh that banning Mr. Nichols violates the First Amendment and asked him to unban him from the "Jim Walsh" Facebook page. Mr. Nichols remains banned from that page.

58. Defendant's banning of Mr. Nichols from the "Jim Walsh" Facebook page prevents Mr. Myers, other constituents of Representative Walsh, and the public from hearing the speech of Mr. Nichols would have engaged in had he not been banned, distorting the expressive forum Representative Walsh creates through his "Jim Walsh" Facebook page.

D. Defendant's banning of Mr. Myers from the "Jim Walsh" Facebook page

59. Mr. Myers lives in the 19th Legislative District of Washington and is a constituent of Representative Walsh.

60. Mr. Myers and Representative Walsh know each-other personally, outside of Facebook through each of their active participation in the political process in Grays Harbor County and Washington State.

61. Mr. Myers began interacting following Representative Walsh's "Jim Walsh" Facebook page sometime prior to October 2018.

62. On or about October 17, 2018, Mr. Myer was banned from the "Jim Walsh" Facebook page.

63. Mr. Myers made no comments on the "Jim Walsh" page that were scandalous, libelous, defamatory, pornographic, off topic, duplicative, obscene or offensive.

64. Defendant's banning of Mr. Myers from the "Jim Walsh" Facebook page prevents or impedes him from participating in the Representative's posts and engaging in discussion with Representative Walsh and with other constituents.

65. Representative Walsh banning of Mr. Myers is a view-point based restriction on his participation in a limited public forum because he did not want Mr. Myers to engage in discussion with himself or other Facebook users that effectively criticized the Representative or his political positions as a Representative for the 19th Legislative District of Washington.

66. Defendant's banning of Mr. Myers from the "Jim Walsh" Facebook page prevents Mr. Nichols, other constituents of Representative Walsh, and the public from hearing the speech of Mr. Myers would have engaged in had he not been banned, distorting

the expressive forum Representative Walsh creates through his “Jim Walsh” Facebook page.

Causes of Action

Count I – Violation of the First Amendment and 42 USC § 1983 (Free Expression)

67. Plaintiff repeats the allegations set forth above as if fully set forth herein.

68. Defendant’s banning of Plaintiffs from the “Jim Walsh” Facebook page violates Plaintiffs’ First Amendment right to freedom of expression because it imposes a viewpoint-based restriction on the Plaintiffs’ participation in a limited public forum.

69. By acting under the color of state law to deprive Plaintiffs of rights guaranteed by the Constitution and laws of the United States, the Defendant has violated and continues to violate 42 U.S.C. § 1983.

70. As a result, Plaintiffs are entitled to declaratory and injunctive relief to restore his access to the Defendant’s “Jim Walsh” Facebook page.

Count II – Violation of the First Amendment and 42 USC § 1983 (Right to Petition)

71. Plaintiffs repeat the allegations set forth above as if fully set forth herein.

72. Defendant’s banning of the Plaintiffs from the “Jim Walsh” Facebook page violates Plaintiffs’ First Amendment right to petition the government for redress of grievances because it imposes a viewpoint-based restriction on the Plaintiffs’ ability to petition the government for redress of grievances.

73. By acting under the color of state law to deprive Plaintiffs of rights guaranteed by the Constitution and laws of the United States, the Defendant has violated and continues to violate 42 U.S.C. § 1983.

74. As a result, Plaintiffs are entitled to declaratory and injunctive relief to restore

his access to the Defendant's "Jim Walsh" Facebook page.

Count III – Violation of Art. I, Sec. 4 of the Washington Constitution (Right to Petition)

75. Plaintiffs repeat the allegations set forth above as if fully set forth herein.

76. Article I, Section 4 of the Washington Constitution affirmatively grants that, "[t]he right of petition and of the people peaceably to assemble for the common good shall never be abridged."

77. Defendant's banning of the Plaintiffs from the "Jim Walsh" page violates Article I, Section 4 of the Washington State Constitution because it imposes a viewpoint-based restriction on the Plaintiffs' participation in a limited public forum.

78. As a result, Plaintiffs are entitled to declaratory and injunctive relief under RCW 7.24.010 to restore his access to the Defendant's "Jim Walsh" Facebook page.

Count IV – Violation of the First Amendment and 42 USC § 1983 (Distortion of Forum)

79. Plaintiffs repeat the allegations set forth above as if fully set forth herein.

80. Defendant's banning of the Plaintiffs from the "Jim Walsh" Facebook page violates the Plaintiffs' First Amendment right participate in and hear the speech being spoken in a limited public forum because it imposes a viewpoint-based restriction on the Plaintiffs' ability to petition the government for redress of grievances, distorting the content of the expressive forum.

81. By acting under the color of state law to deprive Plaintiffs of rights guaranteed by the Constitution and laws of the United States, the Defendant has violated and continues to violate 42 U.S.C. § 1983.

82. As a result, Plaintiffs are entitled to declaratory and injunctive relief to restore

his access to the Defendant's "Jim Walsh" Facebook page.

Count V – Violation of Art. I, Sec. 5 of the Washington Constitution (Speak Freely)

83. Plaintiffs repeat the allegations set forth above as if fully set forth herein.

84. Article I, Section 5 of the Washington Constitution affirmatively grants that, "[e]very citizen may freely speak, write and publish on all subjects, being responsible for the abuse of that right."

85. Defendant's banning of the Plaintiffs from the "Jim Walsh" page violates Article I, Section 5 of the Washington State Constitution because it imposes a viewpoint-based restriction on the Plaintiffs' participation in a limited public forum.

86. As a result, Plaintiffs are entitled to declaratory and injunctive relief under RCW 7.24.010 to restore his access to the Defendant's "Jim Walsh" Facebook page.

Count VI – Declaratory Judgement and Injunction

87. Plaintiffs repeat the allegations set forth above as if fully set forth herein.

88. 28 U.S.C. § 2201(a) provides that "[i]n a case of actual controversy within its jurisdiction, . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought."

89. RCW 7.24.010 provides the judicial branch the "power to declare rights, status and other legal relations whether or not further relief is or could be claimed." As described above, Plaintiffs allege that Defendant's actions violate the First Amendment to the United States Constitution and Article I of the Washington State Constitution.

90. The Defendant has refused to reinstate Plaintiffs' commenting privileges.

91. There is an actual controversy between the parties as to whether Defendant's actions violate the United States and Washington Constitutions.

92. Plaintiffs seek a declaration that Defendant’s censorship of posts on his “Jim Walsh” Facebook page that are critical of him and/or his policies is unconstitutional and violates Plaintiffs’ rights to freedom of speech and petition under the First and Fourteenth Amendments to the United States Constitution and Article I of the Washington State Constitution.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

- a. Declare Defendant's viewpoint-based censorship of the Plaintiffs from Defendant's "Jim Walsh" Facebook page to be unconstitutional;
- b. Enter an injunction requiring Defendant to cease his unlawful practice of censoring Plaintiffs' comments on his Facebook page; restore the posting privileges of Plaintiffs; and restore the posting privileges of all of those who have been unlawfully banned on the basis of viewpoint from commenting;
- c. Award Plaintiffs nominal damages and compensatory damages.
- d. Award Plaintiffs their reasonable attorney fees and costs; and
- e. Grant any additional relief as may be just and proper.

Respectfully submitted this October 24, 2018.

Billie R. Mault.

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